



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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Matthew J. Strickler
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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ASI CONSTRUCTORS, INC. FOR THE LUNGA DAM SAFETY PROJECT MARINE CORPS BASE – QUANTICO

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and ASI Constructors, Inc., regarding the Lunga Dam Safety Project, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "ASI" means ASI Constructors, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. ASI Constructors, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.
2. "BMP" means Best Management Practices.
3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

7. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
8. "E&S" means Erosion and Sediment.
9. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
10. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" or "Virginia Water Protection Permit" means, VWP Individual Permit, under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
15. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
16. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

17. "Project Site" or "Property" means the Lunga Dam Safety Project. The project is located at Lunga Dam on Marine Corps Base – Quantico, in Stafford County, Virginia.
18. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
19. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.
20. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
21. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.14:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
22. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
23. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
24. "USACE" means U.S. Army Corps of Engineers.
25. "Va. Code" means the Code of Virginia (1950), as amended.
26. "VAC" means the Virginia Administrative Code.
27. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. ASI is conducting work at the Project Site in Stafford County, Virginia.
2. On April 12, 2017, DEQ staff conducted an inspection and file review of the Project Site.

3. During the site visit, DEQ staff observed unauthorized fill material in surface waters as the result of sediment discharge from construction. DEQ staff estimates the area of fill material from construction sediment deposition affected approximately 500 linear feet of stream channel.
4. 9 VAC 25-210-50 A states that “[e]xcept in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, excavate in wetlands on or after October 1, 2001, conduct the following activities in a wetland: 1) New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2) Filling or dumping; 3) Permanent flooding or impounding; or 4) new activities that cause significant alteration or degradation of existing wetland acreage or functions.”
5. Va. Code § 62.1-44.15:20.A states that “[e]xcept in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1) Excavate in a wetland; 2) On or after October 1, 2001, conduct the following in a wetland: a) New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b) Filling or dumping; c) Permanent flooding or impounding; or d) New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3) Alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.”
6. As a result of the observations made during the site visit and file review, on May 2, 2017, DEQ issued NOV No. 1704-000321, for the violations of 9 VAC 25-210-50 A, and Va. Code § 62.1-44.15:20.A.
7. On May 24, 2017, representatives of ASI and the subcontractors met with DEQ to discuss the NOV. At the meeting, ASI stated that the discharge fill material in the stream had been dislodged by subsequent heavy rains and had migrated and been dispersed downstream. As a result, restoration of the stream was no longer necessary.
8. Based on the result of the April 12, 2017, site visit, and the May 24, 2017, meeting, the Board concludes that ASI has violated 9 VAC 25-210-50.A, and Va. Code § 62.1-44.15:20.A, as described in paragraph C(3) above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders ASI, and ASI agrees to pay a civil charge of \$11,375.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

ASI shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, ASI shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of ASI for good cause shown by ASI, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 1704-000321, to ASI, dated May 2, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, ASI admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. ASI consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. ASI declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by ASI to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. ASI shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. ASI shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ASI shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and ASI. Nevertheless, ASI agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after ASI has completed all of the requirements of the Order;

- b. ASI petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to ASI.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve ASI from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by ASI and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of ASI certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind ASI to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of ASI.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, ASI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26th day of January, 2018.



Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

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ASI Constructors, Inc. voluntarily agrees to the issuance of this Order.

Date: 9 November 2017 By: _____



Robert Wiegand II, President

ASI CONSTRUCTORS, INC

280 E 20th Ave

Denver, CO 80205-3148

State of Colorado
City/County of Denver

The foregoing document was signed and acknowledged before me this 9th day of

November, 2017, by Robert Wiegand II who is President of ASI Constructors, Inc., on behalf of the corporation.



Notary Public

20164045782

Registration No.

My commission expires: 12/2/20

Notary seal:

CHARLOTTE MURLE SMITH NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20164045782 EXPIRES DECEMBER 2, 2020
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